

Federal Maritime Commission

§ 531.3

§ 531.2 Scope and applicability.

Only individual NVOCCs compliant with the requirements of section 19 of the Act (46 U.S.C. 40901–40904) and the Commission's regulations at 46 CFR part 515 may enter into an NSA with one or more NSA shippers subject to the requirements of these rules. Any NVOCC who has failed to maintain its bond or license or had its tariff suspended or cancelled by the Commission is ineligible to offer and file NSAs.

[69 FR 75853, Dec. 20, 2004, as amended at 74 FR 50724, Oct. 1, 2009]

§ 531.3 Definitions.

When used in this part:

(a) *Act* means the Shipping Act of 1984 as amended by the Ocean Shipping Reform Act of 1998;

(b) *Affiliate* means two or more entities which are under common ownership or control by reason of being parent and subsidiary or entities associated with, under common control with, or otherwise related to each other through common stock ownership or common directors or officers.

(c) *Amendment* means any change to a filed NSA which has prospective effect and which is mutually agreed upon by all parties to the NSA.

(d) *Authorized person* means an NVOCC or duly appointed agent who is authorized to file NSAs on behalf of the NVOCC and to publish the corresponding statement of essential terms and is registered by the Commission to file under § 531.5 and Appendix A to this part.

(e) *BTA* means the Commission's Bureau of Trade Analysis, or its successor bureau.

(f) *BCL* means the Commission's Bureau of Certification and Licensing, or its successor bureau.

(g) *Cancellation* means an event which is unanticipated by the NSA, in liquidated damages or otherwise, and is due to the failure of the NSA shipper to tender minimum cargo as set forth in the contract, unless such tender was made impossible by an action of the NVOCC.

(h) *Commission* or *FMC* means the Federal Maritime Commission.

(i) *Common carrier* means a person holding itself out to the general public

to provide transportation by water of passengers or cargo between the United States and a foreign country for compensation that:

(1) Assumes responsibility for the transportation from the port or point of receipt to the port or point of destination; and

(2) Utilizes, for all or part of that transportation, a vessel operating on the high seas or the Great Lakes between a port in the United States and a port in a foreign country, except that the term does not include a common carrier engaged in ocean transportation by ferry boat, ocean tramp, or chemical parcel tanker, or by a vessel when primarily engaged in the carriage of perishable agricultural commodities:

(i) If the common carrier and the owner of those commodities are wholly owned, directly or indirectly, by a person primarily engaged in the marketing and distribution of those commodities and

(ii) Only with respect to those commodities.

(j) *Correction* means any change to a filed NSA that has retroactive effect.

(k) *Effective date* means the date upon which an NSA or amendment is scheduled to go into effect by the parties to the NSA. An NSA or amendment becomes effective at 12:01 a.m. Eastern Standard Time on the beginning of the effective date. The effective date cannot be prior to the filing date of the NSA or amendment with the Commission.

(l) *Expiration date* means the last day after which the entire NSA is no longer in effect.

(m) *File* or *filing* (of NSAs or amendments thereto) means the use of the Commission's electronic filing system for receipt of an NSA or an amendment thereto by the Commission, consistent with the method set forth in Appendix A of this part, and the recording of its receipt by the Commission.

(n) *OIT* means the Commission's Office of Information Technology, or its successor office.

(o) *NSA shipper* means a cargo owner, the person for whose account the ocean transportation is provided, the person